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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/517,957

08/11/2005

David John Hughes

50698

3769

86344

7590

07/21/2009

Syngenta Crop Protection, Inc.,  
Patent and Trademark Department  
410 Swing Road  
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EXAMINER

SZNAIDMAN, MARCOS L

ART UNIT

PAPER NUMBER

1612

MAIL DATE

DELIVERY MODE

07/21/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<p align="center"><b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b></p>	<p><b>Application No.</b> 10/517,957</p>	<p><b>Applicant(s)</b> HUGHES ET AL.</p>	
	<p><b>Examiner</b> MARCOS SZNAIDMAN</p>	<p><b>Art Unit</b> 1612</p>	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 09 July 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 09 July 2009. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 8 and 10-14.  
Claim(s) withdrawn from consideration: 1-7 and 9.

#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

/Frederick Krass/  
Supervisory Patent Examiner, Art Unit 1612

/MARCOS SZNAIDMAN/  
Examiner, Art Unit 1612

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's arguments have been considered but are not persuasive: Applicant argues that the instant claimed compounds are insecticides, acaricides etc and that the prior art (Hoescht) does not suggest that the disclosed compounds can be used in agriculture.

Examiner's response: the fact is that Hoescht discloses that the compounds are antidepressants, anticonvulsants or tranquilizers and Bauer teaches that the disclosed compounds are also tranquilizers and antidepressants. So, since both references disclose compounds with similar utility and similar structure, it will be obvious to the skilled in the art to combine the teachings of both and arrive to the compounds of the instant Application with the motivation of making a better molecule with tranquilizing properties. The motivation to arrive to the same compound of the instant Application can be different from the one disclosed by Applicant (insecticide, acaricide, etc) and still be valid.

Applicant further argues that the Bauer compounds are structurally very different from those of the present invention.

Examiner's response: although there are some structural differences between the Bauer reference and the instant disclosed compounds, the fact is that Bauer teaches that the allyl and phenyl-allyl groups are functional equivalents, since both show similar activity as tranquilizers, so it is expected, that replacing the allyl group of the Hoescht compound with a allyl-phenyl group will result in a molecule with very similar properties as to the one specifically disclosed by Hoescht, thus resulting in the practice of the instant claims.

Also, Bauer teaches that R1 can be "alkenyl of 3 to 6 carbon atoms" and since the examples cover both R1 allyl (see compound 105 on Table VII, columns 17 and 18) and R1 phenyl allyl (see compound 110 on Table VII, columns 17 and 18) one skilled in the art would reasonably interpret the term "alkenyl" to encompass "substituted alkenyls" like phenyl allyl.